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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,364	07/27/2001	Gary Curtis Gehrke	403	7594
2292	7590	05/18/2004		
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER DUVERNE, JEAN F	
			ART UNIT 2839	PAPER NUMBER

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,364

Applicant(s)

GEHRKE, GARY CURTIS

Examiner

Jean F. Duverne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 2/10/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockman et al (US005774617A).

Stockman et al discloses, in figures 1-7 (see Attachment 1), an insert removably provided within a fiber optic cable management tool comprising:

- a fiber optic cable management tool
- at least one arcuate portion on said fiber optic cable management tool
- a first curved member on said insert having a first curved portion and a second curved portion
- a second curved member on said insert having a first curved portion and a second curved portion
- a third curved member on said insert having a first curved portion and a second curved portion
- said first, second, and third curved members being formed integrally
- a channel formed between the second curved portion of the first curved member and the first curved portion of the third curved member
- a channel formed between the second curved portion of the second curved

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member and the second curved portion of the third curved member

- a channel formed between the curved member and the at least one arcuate portion
- all said curved portions and said channels having a radius that exceeds the minimum bend radius of a fiber optic cable having a diameter less than or equal to 1.7 millimeters (column 1, line 64 - column 2, line 32)
- said channel having a smaller width than a channel provided in the fiber optic cable management tool
- at least one curved member (the third) having first, second, and third curved portions
- a portion on the fiber optic management tool that permits manual grasping (see Attachment 1).

However, Stockman's device fails to explicitly concave shape for the arcuate portion of the tool management or the convex-shaped curved portion for the curved member. It would have been obvious to one having ordinary skill in the time the invention was made to have the arcuate portion of the tool management with the concave shape and the curved member with the convex-shaped, since such a modification would have involved a mere change in shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

Response to Amendment

Applicant's arguments filed with the amendment on 2/10/2004 have been fully considered but they are not persuasive. The claims do not define structural structure

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features that distinguish over prior art: For example, Stockman et al discloses, in figures 1-7 (see Attachment 1), an insert removably provided within a fiber optic cable management tool comprising: a fiber optic cable management tool; at least one arcuate portion on said fiber optic cable management tool a first curved member on said insert having a first curved portion as stated above. The concave shape for the arcuate portion of the tool management or the convex-shaped curved portion for the curved member as amendment added to the claims is not enough to put claims in condition for allowance (see the above rejection). Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

Claims 5-7 are allowed. Prior art fails to disclose the third member with the second curved portion joint each other at a point between the first curved and second curved members with the rest of the claim limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean F. Duverne whose telephone number is (571) 272-2091. The examiner can normally be reached on 9:00-7:30, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on (571) 272-2092. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action may be mailed to:
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

For additional information regarding this new address, which was effective May 1, 2003, see *Correspondence with the United States Patent and Trademark Office*, 68 Fed. Reg. 14332 (March 25, 2003).

**Or Faxed to:
(703) 872-9306.**

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Hand-delivered responses should be brought to:
Crystal Plaza 4, Fourth Floor (Receptionist)
2201 South Clark Place, Arlington, Virginia.

JFD

05/12/2004



Jean Frantz Duverne
Primary Examiner
Art Unit 2839

Attachment 1

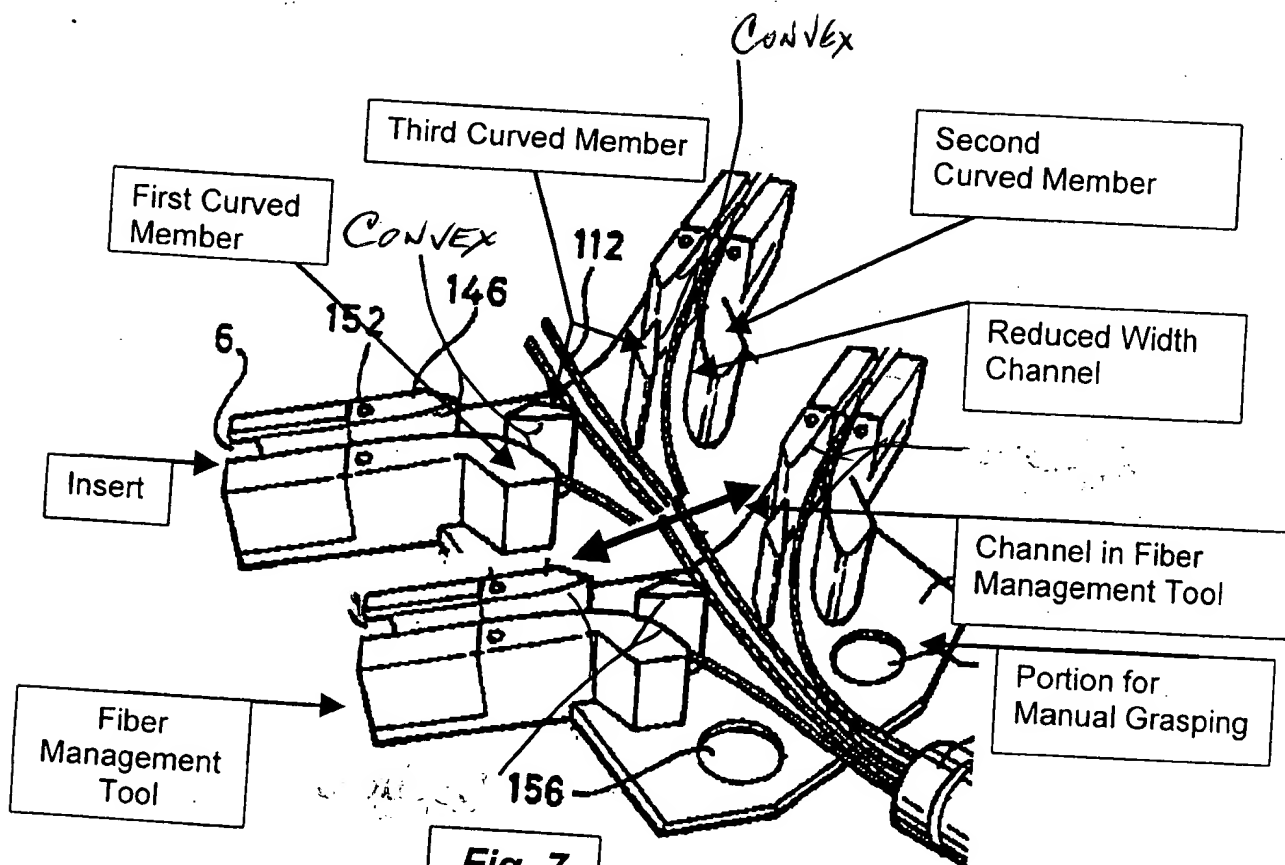


Fig. 7

- copied and superimposed to show a cutaway view of the assembly in Fig. 6

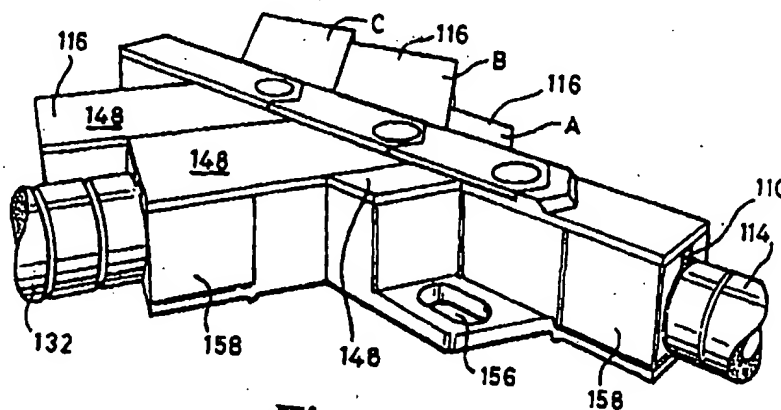


Fig. 6

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